

97-84055-10

Gibbons, George, Sir

Address delivered by
Sir George Gibbons

[Toronto]

[1916]

97-84055-10

MASTER NEGATIVE #

COLUMBIA UNIVERSITY LIBRARIES
PRESERVATION DIVISION

BIBLIOGRAPHIC MICROFORM TARGET

ORIGINAL MATERIAL AS FILMED - EXISTING BIBLIOGRAPHIC RECORD

308	
Z	
Box 78	Gibbons, Sir George
	Address delivered by Sir George Gibbons ... at the 1916 meeting of the Canadian bar association, held in Toronto.
	16 p. 25 ^{cm} .
	Caption title.
	Only Ed.

RESTRICTIONS ON USE: Reproductions may not be made without permission from Columbia University Libraries.

TECHNICAL MICROFORM DATA

FILM SIZE: 35mmREDUCTION RATIO: 12:1IMAGE PLACEMENT: IA (IIA) IB IIBDATE FILMED: 3-27-97INITIALS: MSTRACKING #: 21757

FILMED BY PRESERVATION RESOURCES, BETHLEHEM, PA.

308

—

Box 76

ADDRESS DELIVERED BY

SIR GEORGE GIBBONS, K. C.

*Honourary President of The Ontario Bar Association, at the 1916 Meeting of
The Canadian Bar Association, held in Toronto.*

I propose to discuss certain provisions of what is known as the Treaty of 1909 between the United Kingdom and the United States of America relating to boundary waters and questions arising along the boundary between Canada and the United States. From the point where the International boundary intersects the St. Lawrence River to the mouth of the Pigeon River at the head of Lake Superior the boundary between the United States and Canada lies in the waters of the Great Lakes and communicating waterways.

Before 1909 the important treaties dealing with these waters were:—

First:—The stipulation entered into in the year 1817 between the two countries whereby it was agreed that the naval force to be maintained upon the Great Lakes should be confined to the following vessels on each side:—

“On Lake Ontario to one vessel not exceeding one hundred tons burthen and armed with one eighteen pound cannon.

“On the Upper Lakes to two vessels not exceeding like burthen each and armed with like force.

“On the waters of Lake Champlain to one vessel not exceeding like burthen and armed with like force. And that all other armed vessels on these lakes shall be forthwith dismantled, and that no other vessels of war shall be there built or armed.

It was further agreed “if either party should hereafter be desirous of annulling this stipulation, and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.”

I think you will all concur in the view that the diplomats who brought about this arrangement nearly one hundred years ago were wise in their generation, and that the absence of an armed force on these waters has been an important factor in the maintenance of peaceful relations during that long term.

By Article II. of the Treaty of 1842, known as the Ashburton-Webster Treaty, it is provided as follows:—

"It being understood that all the water-communications, and
 "all the usual portages along the line from Lake Superior to the Lake
 "of the Woods, and also Grand Portage from the shore of Lake
 "Superior to the Pigeon River, as now actually used, shall be free
 "and open to the use of the subjects and citizens of both countries."
 And by Article VII. of the same Treaty it is further provided:—

"It is further agreed, that the channels in the River St.
 "Lawrence on both sides of the Long Sault Islands and of Barnhart
 "Island, the channels in the River Detroit, on both sides of the
 "Island Bois Blanc, and between that island and both the Canadian
 "and American shores, and all the several channels and passages
 "between the various islands lying near the junction of the River
 "St. Clair with the lake of that name shall be equally free and
 "open to the ships, vessels, and boats of both parties."

From this Article it might be argued that the exclusive right of
 navigation of each country within its own territory was conceded
 equal, free and open right to navigation being granted as a privilege in
 certain channels only.

By Article XXVI. of the Treaty of 1871 it was provided:

"The navigation of the River St. Lawrence, ascending and
 "descending from the 45th parallel of north latitude, where it
 "ceases to form the boundary between the two countries, from,
 "to and into the sea, shall forever remain free and open for the
 "purposes of commerce to the citizens of the United States, subject
 "to any laws and regulations of Great Britain or of the Dominion
 "of Canada, not inconsistent with such privilege of free navigation."

"The navigation of the Rivers Yukon, Porcupine and Stikine,
 "ascending and descending from, to and into the sea, shall forever
 "remain free and open for the purposes of commerce to the subjects
 "of Her Britannic Majesty and to the citizens of the United States,
 "subject to any laws and regulations of either country within its
 "own territory, not inconsistent with such privilege of free navi-
 "gation."

As a matter of fact, prior to the year 1909 there had been
 no arrangement between the two countries whatever dealing with the
 use or diversion of boundary waters or streams crossing the boundary.
 The use of these waters for power purposes made more manifest the
 necessity for some agreement, and in the year 1902 an Act was passed
 by the United States Congress containing the following provision:—

"The President of the United States is hereby requested to
 "invite the government of Great Britain to join in the formation
 "of an international commission, to be composed of three members
 "from the United States and three who shall represent the interests

"of the Dominion of Canada, whose duty it shall be to investigate
 "and report upon the conditions and uses of the waters adjacent
 "to the boundary lines between the United States and Canada,
 "including all of the waters of the lakes and rivers whose natural
 "outlet is by the River Saint Lawrence to the Atlantic Ocean, also
 "upon the maintenance and regulation of suitable levels, and also
 "upon the effect upon the shores of these waters and the structures
 "thereon, and upon the interests of navigation by reason of the
 "diversion of these waters from or change in their natural flow;
 "and further, to report upon the necessary measures to regulate
 "such diversion, and to make such recommendations for improve-
 "ments and regulations as shall best subserve the interests of
 "navigation in said waters."

It was not until the year 1905 that action was taken by the Canadian
 Government and a Commission known as the International Waterways
 Commission was created. The result of the work of that Commission
 is largely embodied in the Treaty of 1909, which was almost entirely
 based upon its recommendations.

By the Preliminary Article it is provided:—

"For the purposes of this Treaty boundary waters are defined
 "as the waters from main shore to main shore of the lakes and rivers
 "and connecting waterways, or the portions thereof, along which
 "the international boundary between the United States and the
 "Dominion of Canada passes, including all bays, arms, and inlets
 "thereof, but not including tributary waters which in their natural
 "channels would flow into such lakes, rivers, and waterways, or
 "waters flowing from such lakes, rivers, and waterways, or the
 "waters of rivers flowing across the boundary."

Article I contains the following provision:

"The High Contracting Parties agree that the navigation of
 "all navigable boundary waters shall for ever continue free and
 "open for the purposes of commerce to the inhabitants and to the
 "ships, vessels, and boats of both countries equally, subject, how-
 "ever, to any laws and regulations of either country, within its
 "own territory, not inconsistent with such privilege of free navi-
 "gation, and applying equally and without discrimination to the
 "inhabitants, ships, vessels, and boats of both countries."

"It is further agreed that so long as this Treaty shall remain
 "in force this same right of navigation shall extend to the waters
 "of Lake Michigan and to all canals connecting boundary waters
 "and now existing or which may hereafter be constructed on either
 "side of the line."

Thus a very wide provision is made whereby *all the waters from*

14 April, 1920 - CTRW

main shore to main shore of the lakes, rivers and connecting waterways along the international boundary are declared to be forever free and open for the purposes of commerce to the ships of both countries equally.

By Article 2 provision is made regarding waters which cross the boundary:—

"Each of the High Contracting Parties reserves to itself or to the several State Governments on the one side and the Dominion or Provincial Governments on the other, as the case may be, subject to any treaty provisions now existing with respect thereto, the exclusive jurisdiction and control over the use and diversion, whether temporary or permanent, of all waters on its own side of the line which in their natural channels would flow across the boundary or into boundary waters; but it is agreed that any interference with or diversion from their natural channel of such waters on either side of the boundary, resulting in any injury on the other side of the boundary, shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diversion or interference occurs; but this provision shall not apply to cases already existing or cases expressly covered by special agreement between the parties hereto.

"It is understood, however, that neither of the High Contracting Parties intends by the foregoing provision to surrender any right which it may have to object to any interference with or diversions of waters on the other side of the boundary the effect of which would be productive of material injury to the navigation interests on its own side of the boundary."

Before this Treaty no rule of international law could be invoked which would prevent the diversion within its own territory by any State or Province of such waters even though great injury was done to private interests beyond the boundary line. By it private interests so injuriously effected are fully indemnified. The boundary line is forgotten, and the remedies provided are identically the same for the citizens of one country as for those of the other.

The use and disposal of boundary waters are dealt with by Article 8.

"The High Contracting Parties shall have, each on its own side of the boundary, equal and similar rights in the use of the waters hereinbefore defined as boundary waters. The following order of precedence shall be observed among the various uses enumerated hereinafter for these waters, and no use shall be permitted which tends materially to conflict with or restrain any

other use which is given preference over it in this order of precedence:

"(1) Uses for domestic and sanitary purposes:

"(2) Uses for navigation, including the service of canals for the purposes of navigation:

"(3) Uses for power and for irrigation purposes."

And by Article 3 it is provided as follows:—

"No further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line, shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the International Joint Commission":

The Treaty makes new international law applicable to all boundary waters. No diversion on either side of the line affecting the natural level or flow on the other shall be made by the Government of either country without the consent of a permanent board known as the International Joint Commission. Any question as to such use or diversion is removed once and for all from diplomatic controversy to a court established to deal with it upon established principles. No one will dispute the order of precedence given to the use of these waters:—

"(1) Uses for domestic and sanitary purposes," their natural and primary use. Special provision is made by the Treaty whereby "it is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other."

"(2) Uses for navigation, including the service of canals for the purposes of navigation."

The interests of navigation demand the maintenance of the level of these waters (the most important inland navigation highway in the world), and no further diversion which interferes with such level can now be permitted. It will be noticed among the uses of navigation is the service of canals for purposes of navigation. The amount of water required for the service of such canals is very small and inappreciable in dealing with the question of levels. The danger to be provided against is the diversion for power purposes of waters under the pretence that it is required for the actual service of navigation canals.

"(3) Uses for power and for irrigation purposes."

The use for power and irrigation purposes is governed by the pro-

vision giving each of the countries equal and similar rights in the use of the waters heretofore defined as boundary waters. In other words, all the waters that can be diverted from boundary streams (having regard to the prior rights of use for domestic and sanitary purposes and use for navigation) are to be equally divided between the two countries. This provision for equal division applies everywhere save at Niagara Falls, where exceptional conditions existed.

Article 5 provides as follows:—

"The High Contracting Parties agree that it is expedient to 'limit the diversion of waters from the Niagara River so that the 'level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both Parties to accomplish 'this object with the least possible injury to investments which 'have already been made in the construction of power plants on 'the United States' side of the river under grants of authority 'from the State of New York, and on the Canadian side of the 'river under licenses authorized by the Dominion of Canada and 'the Province of Ontario.

"So long as this Treaty shall remain in force no diversion of 'the waters of the Niagara River above the Falls from the natural 'course and stream thereof shall be permitted, except for the purposes and to the extent hereinafter provided.

"The United States may authorize and permit the diversion 'within the State of New York of the waters of said river above the 'Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of twenty thousand cubic feet 'of water per second.

"The United Kingdom, by the Dominion of Canada, or the 'Province of Ontario, may authorize and permit the diversion 'within the Province of Ontario of the waters of said river above 'the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of thirty-six thousand 'cubic feet of water per second.'

Before the adoption of this treaty there was no rule of International Law which called upon any nation to recognize riparian rights outside of its own territory. Every nation had a perfect right, as long as it did not interfere with public rights of navigation, to divert the waters of boundary streams without regard to the injury inflicted upon private interests beyond the boundary line.

In boundary waters where navigation was impracticable by reason of rapids the conditions always made the flow of water available for power purposes. In the rapids of the Rivers St. Mary, Niagara and St. Lawrence the power capable of development from this source is almost

of untold value. At Niagara, if the maintenance of the scenic effect were abandoned, at least two million horse power would be available. Enormous development is possible in the St. Lawrence, and the waters of the St. Mary's River are now supplying power in large quantities on each side of the river.

Before the treaty was entered into the insistent demand for the development of more power at Niagara had led to the granting of many charters and the promotion of many projects on each side of the river: some above and some below the crest of the rapids; one of which would have diverted the natural course of the stream by excavations in the bed of the river, and all were based upon the assumption that within its own territory either country could do as it pleased without regard to its neighbor. Such a condition could not continue. It was absolutely essential that some arrangement should be made between the two countries controlling the use of these waters. This could be done: (1) by dealing separately and independently with each locality and deciding the proportion of flow which each country was entitled to at each particular point; having regard to the local conditions, or (2) agree upon a general principle which ought to govern the division everywhere.

The water of Lake Superior finds its way through the St. Mary's, Niagara and St. Lawrence Rivers to the sea. At no point on the flow is the proportion on either side of the boundary the same. The same water in one instant is on one side of the boundary and in the next moment on the other side. The boundary line affords no barrier to its flow. It is possible that wherever power could be developed in these streams to have the intakes at different places; some above and some below the crest of the rapids. The proportion of flow in one case might be largely on one side of the boundary line and in another upon the opposite side.

Any attempt to deal with the question, basing the division upon the proportion of flow on each side of the boundary in any particular locality, would lead to utter confusion; conflicting interests would never agree upon the point where the measurement which would show the proportion to which each was entitled should be made. Private interests on each side would be aroused and controversies in the press and upon the platform would inflame public opinion and make an amicable adjustment impossible. Irritation and dissatisfaction would certainly result and possibly something worse.

The Canadian contention during the whole of the negotiations was that there was no right of property but a common right of use of these waters, and that the only satisfactory way to deal with the question was to adopt the principle of equal division without regard to the volume

of flow on either side of the boundary line at any particular point. This view was finally accepted, and the treaty provides for the equal right of use of all boundary waters for power purposes. An exception, but only an apparent exception, is made in Niagara Falls. If the preservation of the scenic effect were ignored each country there as elsewhere, according to the principle adopted, would be entitled to take one half of the whole flow of the river below the crest of the rapids, because one half of the whole flow could be taken there without interfering with navigation or lake level. If, however, the beauty of Niagara was to be retained it was necessary that each country should sacrifice its right to take some portion of half the flow at this point. It was found that owing to the much larger volume flowing on the Canadian side below the crest of the rapids it was possible for us to take a larger quantity for power purposes without serious injury to the scenic effect than could be taken on the United States side of the border. It was because of this and the other special reasons mentioned in Article V. that the Canadians were allowed greater diversion at Niagara without any intention on the part of those negotiating the treaty to interfere in any way with the general principle that each country was entitled to an equal share.

In order to get the full benefit of the Provision giving us an equal right to the use of these boundary waters it was necessary that we should control the output so as to provide not only that the production of the power should be in Canada, but that its use should be for the benefit of our people, and, therefore, before the Treaty had been agreed upon at the suggestion of the Canadian Section of the International Waterways Commission, of which I had the honor of being the Chairman, a special Act was introduced and passed in the year 1907, known as Chapter 16, 6-7 Edward VII. The following Sections of the Act are important:—

"3. No person shall export any power or fluid without a license, "or any power or fluid in excess of the quantity permitted by his "license, or otherwise than as permitted by such license; provided "that any person who, immediately prior to the passing of this "Act, is lawfully engaged in the exportation of power or fluid shall "not, with respect to such exportation, be subject to the provisions "of this act until six months after this Act comes into force or "until he has sooner obtained a license under this Act, unless and "except in so far as his exportation at any time during the interval "ratably exceeds in quantity of power or fluid the amount which he "was exporting prior to the passing of this Act.

"2. No person shall, without a license construct or place in "position any line or wire or other conductor for the exportation of "power, or any pipe line or other like contrivance for the exportation "of fluid."

"4. Subject to any regulations of the Governor in Council in "that behalf, the Governor in Council may grant licenses, upon "such conditions as he thinks proper, for the exportation of power "or fluid where a right to export exists by lawful authority; and "such license shall be revocable upon such notice to the licensee "as the Governor in Council deems reasonable in each case."

"5. Any such license may provide that the quantity of power "or fluid to be exported shall be limited to the surplus, after the "licensee has supplied for distribution to customers for use in "Canada power or fluid to the extent defined by such license, at "prices and in accordance with conditions, rules and regulations "prescribed by the Governor in Council."

"6. Every such license shall be revocable at will by the Governor "in Council if the licensee refuses or neglects to comply with any "of the conditions imposed with regard to the supply and distri- "bution of power or fluid in Canada."

As a result of this legislation all the power developed at Niagara Falls on the Canadian side is under the absolute control of the Dominion Government, which has power to fix prices and to make rules and regulations with regard to its disposition.

I am glad to see that action is now being taken and that some arrangement has been made whereby additional power (heretofore exported) is to be supplied to the Hydro System of this Province.

Perhaps the most important Articles in this Treaty are those dealing with the use of the International Joint Commission for the purposes of settling questions or matters of difference that arise between the two countries. These are as follows:—

"Article 9. "The High Contracting Parties further agree that "any other questions or matters of difference arising between them "involving the rights, obligations or interests of either in relation "to the other or to the inhabitants of the other, along the common "frontier between the United States and the Dominion of Canada, "shall be referred from time to time to the International Joint "Commission for examination and report, whenever either the "Government of the United States or the Government of the "Dominion of Canada shall request that such questions or matters "of differences be so referred.

"The International Joint Commission is authorized in each "case so referred to examine into and report upon the facts and cir- "cumstances of the particular questions and matters referred, to- "gether with such conclusions and recommendations as may be "appropriate, subject, however, to any restrictions or exceptions

"which may be imposed with respect thereto by the terms of the reference.

"Such reports of the Commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.

"The Commission shall make a joint report to both Governments in all cases in which all or a majority of the Commissioners agree, and in case of disagreement the minority may make a joint report to both Governments or separate reports to their respective Governments.

"In case the Commission is evenly divided upon any question or matter referred to it for report, separate reports shall be made by the Commissioners on each side to their own Government."

Article 10. "Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations or interests of the United States or of the Dominion of Canada, either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the Governor General in Council. In each case so referred the said Commission is authorized to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

"A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.

"If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure prescribed in the fourth, fifth and sixth paragraphs of Article XLV. of the Hague Convention for the pacific settlement

"of international disputes, dated October 18, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission failed to agree."

By Article 12 it is provided that each Commissioner, "before proceeding with the work of the Commission, make and subscribe a solemn declaration in writing that he will faithfully and impartially perform the duties imposed upon him under this Treaty."

The Commission is not, as some Members of Parliament thought, a diplomatic body in any sense. It is a judicial body sworn to decide in accordance with justice. It is not a Board of Arbitrators composed in whole or part of members appointed with the special object of obtaining victory for their side in any special controversy. The permanent character of the Commission is its greatest strength. Its success, and in fact its very existence, depends upon its members carrying on their work in the spirit of their oath of office. If the sole object of the Board is to find out what ought to be done, having regard to the principles adopted, its task will be comparatively easy, whereas if the members representing each country seek in any case to obtain an unjust advantage the Commission will be a failure and its members will find it impossible to continue their work successfully.

There are many other special provisions in the Treaty which I have not time now to deal with.

The experience of the International Waterways Commission and the result of its work as embodied in this Treaty and otherwise is valuable, I think, as suggesting a plan which may be developed to advantage in dealing with international relations.

As to the present war may I quote some words of Phillip Gibbs:—

"Germany thrust this thing upon Europe deliberately and after careful preparation. Upon the heads of their diplomats and princes are the blood and the guilt of it, and they stand before the world as murderers with red hands and blood-shot eyes, and souls as black as hell. In this war of self-defence we are justified and need no special pleading to proclaim our cause. We did not want this war, and we went to the extreme limit of patience to avoid it. But if there is to be any hope for humanity we must go deeper into the truth than the mere analysis of White Papers and Yellow Papers with diplomatic correspondence."

There never has been any serious attempt as yet to provide as between the nations any machinery by which the action of each toward the other should be regulated by established law administered by a permanent Court and enforced by international police. Laws, Courts and Police are necessary within each State, and without them anarchy

would prevail. While nominally all the nations profess to be governed by the rules of justice, each has constituted itself the sole judge of what it deems to be right, and each has relied and must rely upon the sword to maintain its decisions. That is a state of anarchy.

Under these conditions each nation in the war zone has been increasing its armaments year by year; Germany most strenuously and with undoubted purpose of aggression; the others of necessity preparing to meet her attacks. Attempts have been made to get the nations to arbitrate some class of differences through the Hague Tribunal, but even the nations who have entered into agreements with regard to references to that Tribunal refuse to include among the questions to be submitted those which "affect the vital interests, the independence, or the honour of the two Contracting States." Any arrangement that does not provide for the settlement of all manner of disputes is comparatively useless. If a nation is liable to have war at any time because some other nation thinks its vital interests or honour is affected it will have to make preparation against that contingency. Preparation for attack justifies and necessitates the preparation for defence, and while preparation for defence may postpone, it will not in the end prevent war. Increasing general armament inevitably leads to war: nations will not year after year strain their resources preparing for war without engaging in it sooner or later. No one nation is strong enough to defend itself against all possible combinations, but must depend also upon brittle alliances liable to be broken at any moment. Any amount of preparedness will not prevent war under conditions where the sword is the only arbiter. Is there no remedy?

Peace at any price is impossible and contemptible. Without police to protect life and property within the state no one would be secure, and the ruffians and thieves would run rampant. Under present conditions every nation must be prepared at least for self-defence. There never can be any peace in the world without right and justice. Any premature peace now would only be

"Such a peace as the ear can achieve,

"'Twixt the rifle's click and the rush of the ball,

"'Twixt the tiger's spring and the crunch of the tooth."

But when this horrible war is over can nothing be done to prevent a repetition? Is it not possible that those who meet around some table to settle the terms of peace may be able at the same time to provide a scheme which will substitute for anarchy and total absence of law and control among the nations, a system founded upon principles of right?

(1) Adopt an International Code which shall govern the action of

the Court and fully protect the rights and liberties of the individual states.

(2) Constitute a judicial body to settle matters in dispute in accordance with the principles adopted.

(3) Provide for sufficient force in the nature of international police.

In other words, will it not be possible to place the sword in the hand of justice so that it will be unsheathed only to enforce the measure which the scales show should be meted out? The scales in the hand of justice without the sword would be worse than useless, while the sword without the scales means only brutality.

The American Institute of International law, at its first meeting at Washington in December last, adopted as its point of departure for future discussions a declaration of the rights and duties of nations (See appendix.)

Once Justice is placed upon the throne it will not be very difficult to provide properly tested scales. The rules that long have been accepted as necessarily applicable in governing the relation of individuals to each other are just as applicable as between nations. No one justifies, in private life, the strong taking by force the property of the weak; no nation should be justified in playing the part of a highwayman. The liberty, integrity and the right of self-government of every nation should be insured. Dishonesty by a nation is as reprehensible as by an individual and should, in like manner, be subject to punishment. Serious men seeking to bring peace on earth and remembering that "God's Face" will be "waiting after all" will not have great difficulty in formulating rules binding upon the Court.

The two great objections raised to the attempt to establish an International Court are:—

First:—The objection that no nation is willing to leave questions of vital interest or honour to any Court. A leading citizen in the United States said, in voicing his objection, that no man, if his wife were insulted, would be willing to leave the matter to arbitration. If the man knew that the consequence of his manner of resenting insult would bring about a riot in which thousands of lives would be lost he might well restrain his temper and let the law take its course. It would be possible before the establishment of a Court to propound and adopt a Code of International Law which would limit and control the action of the Court and so afford ample protection against unjust interference by any nation with the vital interest or honour of another. The unspeakable horrors of the present war will influence the Statesmen of all Nations, after it is over, to prevent a repetition, and what was not practical before may be possible then.

As the New York Life puts it:—

"The good old way of running countries has come a frightful 'cropper. Slowly, painfully and at enormous cost, the world that 'it has regulated is working out of an awful pickle. People can't 'help feeling that the old remedies no longer cure, and that the 'existing world disease, like infant paralysis, baffles the doctors 'and calls for a new treatment."

The leading Statesmen of Great Britain—Asquith, Lloyd George, Lord Grey—are all declaring that this war must put an end to militarism and make another such war impossible for generations. Unless some other remedy is provided when it is over (no matter how complete our triumph) the benefit will only be for a day.

The fear of "what might have been" but for our superiority in the use of force will not only justify but necessitate a maintenance of that superiority. That means the same old story and sooner or later the same result. The burden of preparedness will force war without to avert revolution within, or a combination only sustained by selfish interest will sooner or later break. Appreciating this condition the obvious remedy is to provide for the maintenance of order among nations by the same means that has proved effectual as between citizens—the enactment of laws and the establishment of a court with provision for enforcement of its decrees.

The second objection is, that even if an International Court were formed the nations agreeing to abide by its decision would not do so. If a Court on the lines suggested had been in existence when the differences which are supposed to have brought about this war arose, no Kaiser would have dared to refuse to refer the matters in dispute to it for settlement. Every nation involved in this war admits that it never should have been begun and denies responsibility for it. No nation could escape its responsibility once a tribunal is established to inquire into the facts and provide a remedy, and no nation would dare to face that responsibility when it could be fixed upon it. The silly things that have been made excuses for war would be made to appear very trivial when placed before an impartial tribunal. The inclination of every member of the Court would be to make it a success, and every member would know that that could only be accomplished by administering justice with an even hand. A Court constituted with the sole desire to do justice would not have a very difficult task. Its conclusions would have world-wide influence upon public opinion; democracy the world over would rejoice at its existence and support its decrees.

How can there ever be government by the people on the earth under present conditions? The sword is drawn without reference to them, and they are helpless because there is no alternative. Once Justice is enthroned with scales in hand the peoples everywhere will demand their

use. It is only because there are no scales provided that any one dare suggest that the sword should be the arbiter.

When this war is over all will be ready to "highly resolve that these 'dead shall not have died in vain."

"When the guns cease fire and all is still from the woods and 'fields and seas, from the skeleton towns of ravaged countries, 'the wistful dead will rise and with their eyes accuse us. In that 'hour we shall have for answer only this: We fought for a better 'future for mankind.

"Did we? Do we? That is the great question. Is our gaze 'really fixed on the far horizon? Or do we only dream it; and 'have the slain no comfort in their untimely darkness; the maimed, 'the ruined, the bereaved no thread of consolation? Is it all to 'be for nothing but the salving of National prides? And shall 'the Ironie Spirit fill the whole world with his laughter?

"Or shall the nations take the first step in that grand march 'of real deliverance which will make the whole earth—at last— 'the islands of the blessed? (Galsworthy)."

If "there is no hope of that, if, as some students of life hold, 'war will always happen because life itself is a continual warfare 'and one man lives only at the expense of another, then there 'is no hope, and all the ideals of men striving for the progress of 'mankind, all the dreams of poets and the sacrifices of scientists 'are utterly vain and foolish, and pious men should pray God to 'touch this planet with a star and end the folly of it all."—Gibbs, "'Soul of the War.'"

APPENDIX.

"I. Every nation has the right to exist and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states."

"II. Every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states."

"III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, to assume, among the Powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

"IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory and all persons, whether native or foreign, found therein."

"V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe."

"VI. International law is at one and the same time both national and international; national in the sense that it is the law of the land and applicable as such to the decisions of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles."

MSH 21757

**END OF
TITLE**